

# **Forest County**

## **Application for Variance**

### ***What is a variance?***

A variance authorizes a property owner to use property or place structures in a manner prohibited by the zoning ordinance.

### ***What are the applicant's responsibilities?***

The burden is on the applicant or property owner to provide verifiable facts upon which the Board of Adjustment can make its decision. A scale drawing of the property must be included with the application. The location of property lines, septic systems, wells and the proposed construction must be clearly marked on the property. It is up to you to make your case! At the hearing, any party may appear in person or be represented by an agent or attorney. A scale drawing of the property is required.

### ***What types of variances are there?***

There are area variances and use variances. An area variance relaxes restrictions on dimensions, such as setback, frontage, height, bulk, density, and area. A use variance grants permission for a use which is not permitted by the zoning ordinance.

### ***What are the standards for granting variances?***

Each variance request is taken individually by the Board of Adjustment. This means that previous decisions on similar or neighboring properties, or even decisions made in the same hearing, do not set a binding precedent that must be followed. Each situation is unique. In general, the board considers the following tests in determining whether a variance should be granted or denied.

To authorize a variance, the board must find four things. (1) Due to special conditions, a literal enforcement of the ordinance will result in "unnecessary hardship". (2) the variance is needed so that the "spirit of the ordinance" will be observed. (3) "substantial justice" will be done by granting the variance. (4) the variance will not be contrary to the public interest. The board must find all four things in order to grant a variance. Usually the most difficult thing for an owner to prove is unnecessary hardship.

### ***Unnecessary hardship***

The legal standard of "unnecessary hardship" is different for the two types of variance. Unnecessary hardship exists for an area variance if compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

In seeking a use variance, to show unnecessary hardship, the property owner must demonstrate that without the variance, the owner has no reasonable use of the property. Where the record before the board demonstrates that the owner would have any reasonable use of the property without the variance, the variance should be denied.

### ***What factors should the board consider in determining whether this standard is met in individual cases of area variances?***

The board should consider the purpose of the zoning restriction in question (including the purpose of shoreland zoning, if applicable), its effect on the property, and the effect of a variance on the neighborhood and the larger public interest. The board should analyze the facts of each case in light of the purpose of the zoning restriction. The board should distinguish hardships that are unnecessary in light of unique conditions of the property and the purpose of the ordinance from hardships that do not warrant a variance, either because they are inconsequential or not

unique or because a variance would unduly undermine the purpose of the ordinance or the public interest.

## **Step by Step Instructions**

### ***Submitting an application***

The application must be received approximately 30 days before the hearing in order to accommodate statutory requirements for publishing and posting legal notices.

At the time of application you will be asked to:

- Complete an application form and land use plan, submit the 300.00 fee to Forest County.
- Provide detailed plans, and a scaled drawing describing your lot and project. Your application must accurately depict the following
  - a. The location and size of the property including all lot line dimensions.
  - b. Indicate north
  - c. Show the location and names of all surrounding roads
  - d. Show the location of all area water bodies
  - e. Indicate all existing buildings and mark with "EB"
  - f. Indicate all wells and sanitary systems and mark as such
  - g. Show the requested construction and include the following measurements:
    - h. distance from the centerline of all roads
    - i. distance to all lot lines
    - j. distance to all water bodies distance from sanitary system drainfield and tanks
    - k. distance from well
- Provide a written statement showing that your project meets the legal criteria for a variance as outlined above.
- The zoning office will provide a list of landowners within 300 feet to notify.

**The application material should present your case as clearly as possible.**

### **Get ready for the hearing!**

Here are some steps that you can take to ensure that the hearing goes smoothly:

- Do not attempt to contact any BOA member before the hearing. If you do, they may have to abstain from voting on your request.
- Clearly mark all property boundaries, sanitary systems, wells and the location of the proposed construction on your property with flags, stakes or tape.
- Making an accurate drawing is to your benefit. The board members only look at the site briefly and a good drawing can help you make your case in the hearing.
- Failure to submit the required information or stake out the property is sufficient grounds for dismissal or denial of the application.

Following these steps, the zoning office will publish notice of your request for a variance in the county's official newspaper noting the location and time of the required public hearing. The burden will be on you as property owner to provide verifiable facts upon which the board may base its decision. At the hearing any party may appear in person or be represented by agent or attorney. If any of these requirements are not met or if you or your agent do not appear at the public hearing, the board must deny your request for a variance and your fee will be forfeited.

### ***If you qualify for a variance***

- The board may grant only the minimum variance that preserves a reasonable use of a parcel for its owner.

- It may impose conditions on project design, construction activities or operation of a facility to assure that public interests are protected.
- Because a property rather than its owner may qualify for a variance, a variance transfers to subsequent property owners.
- If granted no construction shall begin until a land use permit has been issued.

***Appeal Opportunities***

If a decision is reached that the applicant or any interested party does not find favorable, the proper avenue of appeal is to the local court. A decision of the board may only be appealed during the 30 days following the filing of the decision. In limited circumstances a variance request may be returned to the board for a rehearing.

## Petition for Variance

Date Filed: \_\_\_\_\_ Fee: \_\_\_\_\_ Receipt No. \_\_\_\_\_

Owner Information: Name \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Phone or Cell No.: \_\_\_\_\_ E-Mail: \_\_\_\_\_

Property Address: \_\_\_\_\_ Section \_\_\_\_\_ Township \_\_\_\_\_ Range \_\_\_\_\_

Property Identification No. (18 digits) \_\_\_\_\_ computer (12 digit) \_\_\_\_\_

Zoning District \_\_\_\_\_ Current Use \_\_\_\_\_

Relief is requested to allow: \_\_\_\_\_

\_\_\_\_\_

Address each of the following criteria for granting a variance. Attach additional pages as necessary.

- Unnecessary hardship is present because:

\_\_\_\_\_  
\_\_\_\_\_

- Compliance with the ordinance is prevented by these unique features of the property

\_\_\_\_\_  
\_\_\_\_\_

Signed; \_\_\_\_\_ Date: \_\_\_\_\_

### Office use only

Plot Plan attached to this drawing \_\_\_\_\_ Ordinance Section(s) \_\_\_\_\_

Date of hearing: \_\_\_\_\_ Location: \_\_\_\_\_

Comments \_\_\_\_\_

